

AMENDED IN ASSEMBLY DECEMBER 16, 2008

CALIFORNIA LEGISLATURE—2009—10 FIRST EXTRAORDINARY SESSION

SENATE BILL

No. 1

Introduced by Senator Ducheny

December 8, 2008

~~An act relating to the Budget Act of 2008. An act to add Sections 6051.7 and 6201.7 to, to add Chapter 5.8 (commencing with Section 32231) to Part 14 of, and to add Part 21 (commencing with Section 42001) to, Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as amended, Ducheny. ~~Budget Act of 2008. Taxation.~~

Existing law imposes a state sales and use tax on retailers and on the storage, use, or other consumption of tangible personal property in this state at the rate of 6¹/₄% of the gross receipts from the retail sale of tangible personal property in this state and of the sales price of tangible personal property purchased from any retailer for storage, use, or other consumption in this state.

This bill would provide that the state sales and use tax rate on the sale of, and on the storage, use, or other consumption of, tangible personal property, would increase 1¹/₂% to a rate of 7³/₄% from March 1, 2009, to and including December 31, 2011.

The Alcoholic Beverage Tax Law imposes an excise tax, at specified rates, for the privilege of selling or possessing for sale beer, wine, sparkling wine, sparkling cider, and distilled spirits. The proceeds from the excise tax are deposited in the Alcoholic Beverage Control Fund for transfer to the General Fund. The Alcoholic Beverage Tax Law also imposes a surtax, at specified rates, for the privilege of selling or

possessing for sale, beer, wine, sparkling cider, and distilled spirits. The proceeds from this surtax are deposited into the General Fund.

This bill would, beginning on February 1, 2009, impose an additional surtax on beer, wine, sparkling cider, and distilled spirits, and would also impose a surtax on sparkling wines. This bill would require that the revenues derived from the additional taxes be remitted to the State Board of Equalization and deposited in the General Fund.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose an oil severance tax on and after February 1, 2009, upon any producer for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at the rate of 9.9% of the gross value of each barrel of oil severed. The tax would be administered by the Department of Conservation and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the department to deposit all tax revenues, penalties, and interest collected pursuant to these provisions into the General Fund, except for a specified sum, which would be required to be deposited into the Oil, Gas, and Geothermal Administrative Fund.

Because this bill would expand the scope of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 1, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 1, 2008, pursuant to the California Constitution.

This bill would take effect immediately as a tax levy, but the operative dates of its provisions would be the dates specified in its provisions.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2008.~~

~~The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 1, 2008.~~

~~This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 1, 2008, pursuant to the California Constitution.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 6051.7 is added to the Revenue and*
2 *Taxation Code, to read:*

3 *6051.7. (a) In addition to the taxes imposed by Section 6051*
4 *and any other provision of this part, for the privilege of selling*
5 *tangible personal property at retail, a tax is hereby imposed upon*
6 *all retailers at the rate of 1 1/2 percent of the gross receipts of any*
7 *retailer from the sale of all tangible personal property sold at*
8 *retail in this state, on and after March 1, 2009.*

9 *(b) This section shall remain in effect through and including*
10 *December 31, 2011.*

11 *SEC. 2. Section 6201.7 is added to the Revenue and Taxation*
12 *Code, to read:*

13 *6201.7. (a) In addition to the taxes imposed by Section 6201*
14 *and any other provision of this part, an excise tax is hereby*
15 *imposed on the storage, use, or other consumption in this state of*
16 *tangible personal property purchased from any retailer for storage,*
17 *use, or other consumption in this state, at the rate of 1 1/2 percent*
18 *of the sales price of the property, on and after March 1, 2009.*

19 *(b) This section shall remain in effect through and including*
20 *December 31, 2011.*

1 *SEC. 3. Chapter 5.8 (commencing with Section 32231) is added*
2 *to Part 14 of Division 2 of the Revenue and Taxation Code, to*
3 *read:*

4
5 *CHAPTER 5.8. ADDITIONAL SURTAX ON BEER, WINE, AND*
6 *DISTILLED SPIRITS*

7
8 *Article 1. Imposition of the Surtax*
9

10 32231. *On and after February 1, 2009, an excise surtax is*
11 *hereby imposed upon all beer and wine sold in this state by a*
12 *manufacturer, winegrower, or importer, and upon all distilled*
13 *spirits sold in this state by a manufacturer, distilled spirits*
14 *manufacturer's agent, brandy manufacturer, winegrower, importer,*
15 *rectifier, wholesaler, common carrier with respect to distilled*
16 *spirits sales made upon boats, trains, and airplanes, or persons*
17 *licensed to sell distilled spirits upon boats, trains, and airplanes,*
18 *and upon sellers of beer, wine, or distilled spirits with respect to*
19 *which no tax has been paid within areas over which the United*
20 *States government exercises jurisdiction, at the following rates:*

21 *(a) On all beer, fifty-three cents (\$0.53) per gallon and at a*
22 *proportionate rate for any other quantity.*

23 *(b) On all still wines containing not more than 14 percent of*
24 *absolute alcohol by volume, one dollar and twenty-eight cents*
25 *(\$1.28) per wine gallon and at a proportionate rate for any other*
26 *quantity.*

27 *(c) On all still wines containing more than 14 percent of*
28 *absolute alcohol by volume, one dollar and twenty-eight cents*
29 *(\$1.28) per wine gallon and at a proportionate rate for any other*
30 *quantity.*

31 *(d) On champagne, sparkling wine, excepting sparkling hard*
32 *cider, whether naturally or artificially carbonated, one dollar and*
33 *twenty-eight cents (\$1.28) per wine gallon and at a proportionate*
34 *rate for any other quantity.*

35 *(e) On sparkling hard cider, one dollar and twenty-eight cents*
36 *(\$1.28) per wine gallon and at a proportionate rate for any other*
37 *quantity.*

38 *(f) On all distilled spirits of proof strength or less, four dollars*
39 *and twenty-seven cents (\$4.27) per wine gallon and at a*
40 *proportionate rate for any other quantity.*

1 (g) *On all distilled spirits in excess of proof strength, four*
2 *dollars and twenty-seven cents (\$4.27) per wine gallon and at a*
3 *proportionate rate for any other quantity.*

4 32232. *Except with respect to beer and wine in the internal*
5 *revenue bonded premises of a manufacturer, and except with*
6 *respect to distilled spirits in the possession of a distilled spirits*
7 *manufacturer, distilled spirits manufacturer's agent, brandy*
8 *manufacturer, rectifier, wholesaler, or common carrier licensed*
9 *to sell distilled spirits onboard boats, trains, and airplanes, floor*
10 *stock taxes are hereby imposed in amounts equal to the surtaxes*
11 *imposed by Section 32231 upon all alcoholic beverages upon which*
12 *the surtaxes have not been paid, that are in the possession or under*
13 *the control of every person licensed under Division 9 (commencing*
14 *with Section 23000) of the Business and Professions Code at 2:01*
15 *a.m. on February 1, 2009. On or before March 15, 2009, each*
16 *person subject to the tax imposed by this section shall prepare and*
17 *file with the State Board of Equalization, on a form prescribed by*
18 *the board, a return showing the amount of units of beer, wine,*
19 *champagne, sparkling wine, sparkling hard cider, and distilled*
20 *spirits possessed by him or her at 2:01 a.m. on February 1, 2009,*
21 *that are subject to the tax imposed by this section, and any other*
22 *information the board deems necessary for the proper*
23 *administration of this chapter. The taxpayer shall deliver the*
24 *return, together with a remittance of the tax due, to the office of*
25 *the board on or before March 15, 2009.*

26 32233. *The taxes imposed by this article are in addition to any*
27 *other tax imposed under this part.*

28 32234. *All of the provisions of this part relating to excise taxes,*
29 *with the exception of those contained in Chapter 10 (commencing*
30 *with Section 32501), shall apply to the taxes imposed by this*
31 *article, to the extent that those provisions are not inconsistent with*
32 *this article.*

33
34 *Article 2. Disposition of Proceeds*
35

36 32235. *All surtaxes, interest, and penalties imposed and*
37 *required to be paid under this chapter shall be made in remittances*
38 *to the State Board of Equalization and shall be deposited in the*
39 *General Fund.*

1 32236. *The Board of Equalization shall be reimbursed for*
2 *administrative and implementation costs up to 1 percent of the*
3 *proceeds collected pursuant to Chapter 5.8 (commencing with*
4 *Section 32231) of this part.*

5 SEC. 4. *Part 21 (commencing with Section 42001) is added to*
6 *Division 2 of the Revenue and Taxation Code, to read:*

7
8 *PART 21. OIL SEVERANCE TAX LAW*
9

10 42001. *This part shall be known and may be cited as the Oil*
11 *Severance Tax Law.*

12 42002. *For purposes of this part, the following definitions shall*
13 *apply:*

14 (a) *“Barrel of oil” means 42 United States gallons of 231 cubic*
15 *inches per gallon computed at a temperature of 60 degrees*
16 *Fahrenheit.*

17 (b) *“Department” means the Department of Conservation.*

18 (c) *“Gross value” means the sale price at the mouth of the well*
19 *in the case of oil, including any bonus, premium, or other thing of*
20 *value paid for the oil. If there is no sale at the time of severance,*
21 *“gross value” means the sale price when the oil is sold, including*
22 *any bonus, premium, or other thing of value paid for the oil. If oil*
23 *is exchanged for something other than cash, or if the relation*
24 *between the buyer and the seller is such that the consideration*
25 *paid, if any, is not indicative of the true value or market price,*
26 *then the department shall determine the value of the oil subject to*
27 *the tax based on the cash price paid to producers for like quality*
28 *oil in the vicinity of the well.*

29 (d) *“Oil” means petroleum, or other crude oil, condensate,*
30 *casing head gasoline, or other mineral oil that is mined, produced,*
31 *or withdrawn from below the surface of the soil or water in this*
32 *state.*

33 (e) *“Producer” means any person or entity that takes oil from*
34 *the earth or water in this state in any manner; any person that*
35 *owns, controls, manages, or leases any oil well in the earth or*
36 *water of this state; any person that produces or extracts in any*
37 *manner any oil by taking it from the earth or water in this state;*
38 *any person that acquires the severed oil from a person or agency*
39 *exempt from property taxation under the United States Constitution*
40 *or other laws of the United States or under the California*

1 *Constitution or other laws of the State of California; and any*
2 *person that owns an interest, including a royalty interest, in oil or*
3 *its value, whether the oil is produced by the person owning the*
4 *interest or by another on the person's behalf by lease, contract,*
5 *or other arrangement.*

6 (f) *"Production" means the total gross amount of oil produced,*
7 *including the gross amount attributable to a royalty or other*
8 *interest.*

9 (g) *"Severed" or "severing" means the extraction or*
10 *withdrawing from below the surface of the earth or water of any*
11 *oil, regardless of whether the extraction or withdrawal shall be*
12 *by natural flow, mechanical flow, forced flow, pumping, or any*
13 *other means employed to get the oil from below the surface of the*
14 *earth or water, and shall include the extraction or withdrawal by*
15 *any means whatsoever of oil upon which the tax has not been paid,*
16 *from any surface reservoir, natural or artificial, or from a water*
17 *surface.*

18 (h) *"Stripper well" means a well that has been certified by the*
19 *department as an oil well incapable of producing an average of*
20 *more than 10 barrels of oil per day during the entire taxable month.*
21 *Once a well has been certified as a stripper well, that stripper well*
22 *shall remain certified as a stripper well until the well produces an*
23 *average of more than 10 barrels of oil per day during an entire*
24 *taxable month.*

25 42003. *On and after February 1, 2009, for the privilege of*
26 *severing oil from the earth or water in this state for sale, transport,*
27 *consumption, storage, profit, or use, a tax is hereby imposed upon*
28 *all producers at the rate of 9.9 percent of the gross value of each*
29 *barrel of oil severed. The tax shall be applied equally to all*
30 *portions of the gross value of each barrel of oil severed.*

31 42004. *Except as otherwise provided in this part, the tax shall*
32 *be upon the entire production in this state, regardless of the place*
33 *of sale or to whom sold or by whom used, or the fact that the*
34 *delivery may be made to points outside the state.*

35 42005. *The tax imposed by this part shall be in addition to any*
36 *ad valorem taxes imposed by the state, or any of its political*
37 *subdivisions, or any local business license taxes that may be*
38 *incurred as a privilege of severing oil from the earth or water or*
39 *doing business in that locality. There shall be no exemption from*
40 *payment of an ad valorem tax related to equipment, material, or*

1 *property by reason of the payment of the gross severance tax*
2 *pursuant to this part.*

3 42006. *Two or more producers that are corporations and are*
4 *owned or controlled directly or indirectly, as defined in Section*
5 *25105, by the same interests shall be considered as a single*
6 *producer for purposes of application of the tax prescribed in this*
7 *part.*

8 42007. (a) *There shall be exempted from the imposition of the*
9 *oil severance tax imposed pursuant to this part oil produced by a*
10 *stripper well in which the average value of oil as of January 1 of*
11 *the prior year is less than thirty dollars (\$30) per barrel.*

12 (b) *For oil produced in this state from a well that qualifies under*
13 *Section 3251 of the Public Resources Code or which has been*
14 *inactive for a period of at least the preceding five consecutive*
15 *years, the imposition of the oil severance tax shall be reduced to*
16 *zero for a period of 10 years.*

17 42008. *The tax imposed by this part is due and payable to the*
18 *department quarterly on or before the last day of the month next*
19 *succeeding each calendar quarter.*

20 42009. (a) *Any person who fails to pay any tax within the time*
21 *required shall pay, in addition to the amount of tax owed, plus*
22 *interest at the rate of 1½ percent per month, or fraction thereof,*
23 *computed from the delinquent date of the assessment until and*
24 *including the date of payment.*

25 (b) *Every payment on a delinquent tax owed pursuant to this*
26 *part shall be applied as follows:*

27 (1) *First, to any interest due on the tax.*

28 (2) *Second, to any penalty imposed by this part.*

29 (3) *Third, to the balance, if any, of the tax due.*

30 42010. *On or before the last day of the month following each*
31 *quarterly period of three months, a return for the preceding*
32 *quarterly period shall be filed with the department in the form as*
33 *the department may prescribe.*

34 42011. (a) *The department shall deposit all tax revenues,*
35 *penalties, and interest collected pursuant to this part in the General*
36 *Fund.*

37 (b) *Notwithstanding subdivision (a), the first six million eight*
38 *hundred thirteen thousand dollars (\$6,813,000) of revenue*
39 *collected by the department pursuant to this part in the 2008–09*
40 *fiscal year and any other amount as approved in the final Budget*

1 Act for each fiscal year thereafter, shall be deposited in the Oil,
2 Gas, and Geothermal Administrative Fund, established pursuant
3 to Section 3110 of the Public Resources Code.

4 42012. The department may prescribe those forms and
5 reporting requirements as necessary to implement the tax,
6 including, but not limited to, information regarding the location
7 of the well by county, the gross amount of oil produced, the quantity
8 sold and the selling price, the prevailing market price of oil, and
9 the amount of tax due.

10 42013. The department shall administer and collect the tax
11 imposed by this part pursuant to the Fee Collection Procedures
12 Law (Part 30 (commencing with Section 55001) of Division 2).
13 For purposes of this part, the reference in the Fee Collection
14 Procedures Law to “fee” shall include the tax imposed by this
15 part, to “feepayer” shall include a person required to pay the oil
16 severance tax, and to “board” shall mean the Department of
17 Conservation.

18 42014. In addition to the authority granted by Section 55301,
19 the department may prescribe, adopt, and enforce emergency
20 regulations relating to the administration and enforcement of this
21 part. Any emergency regulations prescribed, adopted, or enforced
22 pursuant to this section shall be adopted in accordance with
23 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
24 3 of Title 2 of the Government Code, and for the purposes of that
25 chapter, including Section 11349.6 of the Government Code, the
26 adoption of these regulations is an emergency and shall be
27 considered by the Office of Administrative Law as necessary for
28 the immediate preservation of the public peace, health and safety,
29 and general welfare. Notwithstanding Chapter 3.5 (commencing
30 with Section 11340) of Part 1 of Division 3 of Title 2 of the
31 Government Code, including subdivision (e) of Section 11346.1
32 of the Government Code, any emergency regulations adopted
33 pursuant to this section shall be filed with, but not be repealed by,
34 the Office of Administrative Law, and shall remain in effect until
35 revised by the director.

36 42015. If any provision of this part or the application to any
37 person or circumstances is held invalid, that invalidity shall not
38 affect other provisions or applications of the part which can be
39 given effect without the invalid provision or application, and to
40 this end, the provisions of this part are severable.

1 *SEC. 5. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

10 *SEC. 6. This act addresses the fiscal emergency declared by*
11 *the Governor by proclamation on December 1, 2008, pursuant to*
12 *subdivision (f) of Section 10 of Article IV of the California*
13 *Constitution.*

14 *SEC. 7. This act provides for a tax levy within the meaning of*
15 *Article IV of the Constitution and shall go into immediate effect.*
16 *However, the provisions of this act shall become operative on the*
17 *dates specified in those provisions.*

18 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
19 ~~changes relating to the Budget Act of 2008.~~

20 ~~SEC. 2. This act addresses the fiscal emergency declared by~~
21 ~~the Governor by proclamation on December 1, 2008, pursuant to~~
22 ~~subdivision (f) of Section 10 of Article IV of the California~~
23 ~~Constitution.~~